

Some Preliminary Statistical, Qualitative, and Anecdotal Findings of An Empirical Study of Collegiality Among Law Professors

by

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I. Introduction

In September 2004, I published a thought-piece, *On Collegiality*¹, in which – typical to the law review genre – I made numerous unsupported empirical assumptions about law school life and then built on these assumptions to fashion hypotheses about issues of collegiality among law school faculties.² Among other things, I proffered that every law school has at least one, and

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¹ Michael L. Seigel, *On Collegiality*, 54 J. LEGAL EDUC. 406 (2004).

² Of course, most law review articles are not about law school life and collegiality. So, in that sense, *On Collegiality* is a very uncharacteristic law review article. The “typical” part is the use of the untested empirical assumptions in fashioning arguments for and against stated positions. For other law review articles discussing issues related to academic collegiality, see e.g., Neil W. Hamilton, *Academic Tradition and the Principles of Professional Conduct*, 27 J.C. & U.L. 609 (2001); Gregory M. Heiser, *Because the Stakes are so Small: Collegiality, Polemic, and Professionalism in Academic Employment Decisions*, 52 U. KAN. L. REV. 385 (2004); Philip

probably two or three, very difficult faculty members who routinely violate norms of collegiality – norms set out and explored in depth in that article.³ I hypothesized that, as a rule, other colleagues and law school administrators generally fail to control or discipline extremely uncollegial faculty members for a variety of reasons, not least of which is a widely perceived tension between the enforcement of a norm of collegiality and notions of academic freedom.⁴ Somewhat provocatively, and certainly contrary to the position taken by the American Association of University Professors, I concluded that university departments, and particularly law schools, should make explicit their expectations of baseline and aspirational collegiality, perhaps through the collective drafting of a statement of “Academic Professional Responsibility,” and then be prepared to enforce violations of baseline collegiality among their members through peer pressure and ultimately disciplinary measures.⁵

I presented a preliminary version of this piece to my colleagues at the Levin College of Law during an April 2003 Workshop. Following this workshop, one of my colleagues sent me an e-mail noting that many of my hypotheses were subject to empirical testing, and he suggested that I follow this original piece with an empirical study of its major themes. I found the notion of an empirical study of collegiality among law professors a fascinating and worthwhile idea. I

A. Glotzbach, *Conditions of Collaboration: A Dean's List of Dos and Don'ts*, ACADEME, May/JUNE 2001; William F. Massy & Andrea K. Wilger, *Overcoming “Hollowed” Collegiality*, 26 CHANGE 10 (1994).

³ Seigel, *supra* note 1, at 432. I’m not the only scholar to make such a claim about the make-up of academic units. *See, e.g.*, JOHN B. BENNETT, COLLEGIAL PROFESSIONALISM: THE ACADEMY, INDIVIDUALISM, AND THE COMMON GOOD 53-55 (Phoenix 1998).

⁴ Seigel, *supra* note 1, at 416-20.

⁵ *Id.* at 429-31.

entertained one serious concern, however: as a typical law professor, I did not feel equipped to engage in sophisticated empirical analysis. Nevertheless, I followed up by hiring a research assistant with a masters degree in psychology and delving into some of the relevant psychology literature.⁶

Eventually I found, through the internet and e-mail, Dr. Kathi-Miner Rubino – a 2004 graduate in Psychology and Women’s Studies from the University of Michigan and now an Assistant Professor at the University of Western Kentucky – who was interested in collaborating with me on a study of collegiality among law professors. Thus this project was born. After discussing our mutual goals, we drafted a survey designed to test many of the hypotheses underlying my original collegiality article as well as some related hypotheses of interest to Dr.

⁶ There is, indeed, a wealth of literature in the field of psychology related to this topic, including articles related to occupational or workplace well-being, *see, e.g.*, Kathi Miner-Rubino & Lilia M. Cortina, *Working in a Context of Hostility Towards Women: Implications for Employees’ Well-Being*, 9 J. OCCUPATIONAL HEALTH PSYCHOL. 107 (2004); Paul E. Spector & Steve M. Jex, *Development of Four Self-Report Measures of Job Stressors and Strain: Interpersonal Conflict at Work Scale, Organizational Constraints Scale, Quantitative Workload Inventory, and Physical Symptoms Inventory*, 3 J. OCCUPATIONAL HEALTH PSYCHOL. 356 (1998); workplace incivility, *see e.g.*, Tim Phillips & Philip Smith, *Everyday Incivility: Towards a Benchmark*, 51 SOC. REV. 85 (2003); Christine M. Pearson et al., *When Workers Flout Convention: A Study of Workplace Incivility*, 54 HUMAN RELATIONS 1387 (2001); Lilia M. Cortina, *Incivility in the Workplace: Incidence and Impact*, 6 J. OCCUPATIONAL HEALTH PSYCHOL. 64 (2001); Lynne M. Anderson & Christine M. Pearson, *Tit for Tat? The Spiraling Effect of Incivility in the Workplace*, 24 ACAD. MGMT. REV. 452 (1999); and behavioral deviance in the workplace, *see e.g.*, ROBERT A. GIACALONE & JERALD GREENBERG, *ANTISOCIAL BEHAVIOR IN ORGANIZATIONS* (Thousand Oaks, Cal.1997); Rebecca Bennett & Christina L. Stamper, *Corporate Citizenship and Deviancy: A Study of Discretionary Work Behavior*, 3 STRATEGIES & ORG. TRANSITION 265 (2002); Ari Kaukiainen et al., *Overt and Covert Aggression in Work Settings in Relation to the Subjective Well-Being of Employees*, 27 AGGRESSIVE BEHAV. 360 (2001); Rebecca J. Bennett, *Perceived Powerlessness as a Cause of Employee Deviance*, in *DYSFUNCTIONAL BEHAVIOR IN ORGANIZATIONS VIOLENT AND DEVIANT BEHAVIOR* (R. Griffin et al. eds., 1998); Sandra L. Robinson & Rebecca J. Bennett, *Workplace Deviance: Its Definition, its Manifestations, and its Causes*, 6 RES. ON NEGOTIATION ORG. 3 (1997).

Miner-Rubino. The survey was administered through the web, and data collection closed on July 3, 2005.

At this moment, Dr. Miner-Rubino is hard at work undertaking a sophisticated statistical analysis of the data we collected. We will report the results of this analysis in the future. In the meantime, however, we both noticed that some of the very basic statistical information obtained from the survey (i.e., simple “frequencies”) was likely to be of significant interest – at least to law professors – standing alone. In addition, 482 of the survey respondents took us up on our request at the end of the survey to share with us in narrative form (1) their personal experiences relating to the climate of their law school; (2) any other issues they believed to be important and relevant; and (3) any topics they believed the survey had left out. A qualitative analysis of these narratives yields some very persistent themes related to life in legal academia. In some cases, the qualitative information sheds preliminary light on the hypotheses to be tested through the quantitative data. The purpose of this essay is to explore these preliminary findings with interested readers.

II. Methodology

A. Generally

1. Design of the Survey

The design of the survey instrument, and a complete description of the various psychological scales employed, will be described in significant detail in our more formal papers. For purposes of this preliminary report, it is sufficient to state that the survey was designed to capture information about respondents’ (1) demographics, including age, gender, ethnic heritage, religion, marital status, sexual orientation, number of years teaching, and law school rank and

tenure status; (2) health and psychological well-being; (3) occupational and workplace well-being; (4) sentiments about their institution's atmosphere and environment on a variety of fronts; (5) perceived personal victimization of uncollegial conduct by other faculty members; (6) perceptions of others' victimization of uncollegial conduct; and (7) perceptions about institutional reactions to uncollegiality. We also included questions designed to measure whether the magnitude of uncollegiality at an institution is connected to certain other of its characteristics, such as an emphasis on open debate, outspoken uncompromising interpersonal styles, and the ability to debate, argue, and persuade. Our major hypothesis was that we would find an inverse correlation between the level of uncollegiality on a law school faculty and the workplace well-being – and perhaps even the mental and physical status – of its members.⁷

2. Distribution of the Survey

Following much e-mail discussion, Dr. Miner Rubino and I settled on the goal of attempting to distribute the survey to the teaching faculty of all 166 law schools that are members of the Association of American Law Schools (AALS), if this could be done at a reasonable cost.⁸ I estimated that there were about 8,000 individuals nationwide who met this description. Our goal of reaching this group turned out to be much more difficult than we originally thought. The

⁷ Cf. Pearson et al., *supra* note 6, at 20-27 (describing the outcomes of workplace incivility); Michael F. Frone, *Interpersonal Conflict at Work and Psychological Outcomes: Testing a Model among Young Workers*, 5 J. OCCUPATIONAL HEALTH PSYCHOL. 246 (2000) (finding, *inter alia*, a correlation between conflict among coworkers and between coworkers and supervisors and psychological outcomes, including depression, self-esteem, somatic symptoms, job satisfaction, organizational commitment, and turnover intentions).

⁸ These schools and their faculty members are set forth in ASSOCIATION OF AMERICAN LAW SCHOOLS, THE AALS DIRECTORY OF LAW TEACHERS 2004-2005 (New York 2004). Simply to keep the size of our data pool to a manageable number, we chose not to survey the additional 1600 (or so) faculty members at the 22 AALS “fee-paid” but not “member” schools.

only organization that maintains an address list of all law faculty in the United States is AALS; however, it *sells* its list at a cost that, when combined with the costs of printing, mailing, and tabulating the results of the survey, was prohibitive to us. This led us to explore the possibility of conducting the survey through the world-wide-web.

A web-based survey provided a new set of challenges. First, we would need to upload the survey onto the web through a program that would collect the data in a usable way. Second, we would need to e-mail a link to the survey web-page to all law professors around the country. Third, we would have to overcome recipients' negative reaction to being solicited over the internet, given the ever-increasing problems e-mail users face with junk and spam electronic mail.

The first challenge was met by employing a professional web-based survey company, KeySurvey.⁹ Through the tools and technical support available at KeySurvey, our Word-based survey instrument could be converted into a web-based instrument with relative ease. The second challenge was a bit more difficult to overcome. AALS does not maintain a database of law professors' e-mail addresses in electronic form. It does, however, provide the e-mail address for each law professor listed in its annually published DIRECTORY OF LAW TEACHERS.¹⁰ Ultimately, by employing a bevy of computer-sophisticated law students, we generated our own database of law professors' e-mail addresses. After testing the survey on approximately twenty volunteers and ironing out some kinks, we were ready to launch. As to the third problem, we'd just have to wait and see the reaction of recipients and hope for a sufficiently high response rate

⁹ See <http://www.keysurvey.com/index1.jsp>.

¹⁰ See ASSOCIATION OF AMERICAN LAW SCHOOLS, *supra* note 8.

to make the effort worthwhile.

B. Unpleasant Surprises

Our first launch of the e-mail containing the survey link took place on March 17, 2005, to about 800 individuals at approximately 13 random law schools. The last launch took place on April 7, 2005; overall, we sent e-mails to 8929 individuals at all 166 AALS member schools. Two “reminder e-mails” were sent out to non-respondents: the first on May 4th and the second on June 15th. The distribution of the survey led to several unpleasant surprises. The first was that, though the launches were performed through the KeySurvey website, each e-mail was actually sent from my personal e-mail account at the University of Florida. This meant that any e-mail that was rejected because a “bad” address had been entered bounced back to my UF account.¹¹ The second unpleasant surprise was that far more of the individuals listed in the AALS Directory are something other than teaching faculty – from administrators to long-ago retired emeriti – than we had anticipated. Many of these well-intentioned folks replied to the e-mail by informing me of their status and either declaring that they would therefore not participate in the survey or asking me if they should. I tried to answer and apologize to all of these e-mails on an individual basis. All in all, I spent much of those three months removing and responding to about 900 “junk” responses from my e-mail account (about 10% of the total launch).

By far the most surprising effect of distributing the survey by e-mail was the number of teaching faculty who chose to respond by e-mailing to me personally.¹² Most of these responses

¹¹ This includes e-mails simply “returned” by the system as well as auto-generated messages that the recipient of the e-mail was temporarily out of the office.

¹² I did not keep an exact count of these e-mails, but I would estimate they numbered several dozen.

were understandable attempts to ensure that the survey was “real” and not the source of a computer virus. Some were from well-wishers or were otherwise complimentary of our project. A few were pedantic in nature: e.g., “informing” Dr. Miner-Rubino and me that there are institutional requirements before a human-subject experiment can be carried out and “hoping” that we had met these requirements. (If these latter respondents had taken the time to read the first page of the survey, of course, they would have learned that our project had been approved by the Institutional Review Boards of both the University of Western Kentucky and the University of Florida.)

A significant number of responses were in the form of a complaint. Many of these contended that the survey was too long and/or took far longer than the 20 minutes we estimated it would take to complete. I have come to agree with this criticism of our survey; though respondents to our test launch averaged 15-20 minutes to complete it, I realize now that (1) they knew their results were not being counted and so probably did not spend as much time thinking about how to answer to some of the more “difficult” questions posed, compared to conscientious respondents in the field, and (2) they took the survey on paper, not in web-based form. One complainant, however, went so far as to accuse Dr. Miner-Rubino and me of being “arguably . . . disingenuous” in our estimated time of completion.¹³

Many of the negative responses, however, were more basic – objecting to my sending the recipient “spam,” refusing to answer such “personal” questions, and expressing cynicism toward our guarantees of anonymity. One particularly vitriolic response pretty much sums up the sentiment expressed by the negative e-mails:

¹³ E-mail on file with the author.

Dear Seigel et. al.

This is absolutely offensive. I would like to see the review of your institution's review committee on testing human subjects. There is no manner by which you can gurantee [sic] anonymity. There is no statement as to the funding or origins of this study. There is no assurance that this is confidential. There is no description of funding. There is no description of who you are. You have utilized a medium which makes it impossible to be assured that this is not an exploitative internet customer preference survey. There is no indication of previous contact with employers or unions involved. The survey is extremely burdensome. The survey should have been mailed individually to each. There is no indication of how people were selected or why this particular sampling. There is no assurance or control on how these answers will be used and whether they will come to the awareness of our own institutions or colleagues. There is no indication of how my name was obtained. There is no descr!ption [sic] of who you are and what makes you qualified to conduct such a survey. There is no indication that your institution approved of this project. There is no indication that you sought the advice or approval of the AALS. There is no indication or proof that you are who you claim to be. There is no indication or control on how you intend to use or disseminate the conclusions you make. There is no indication of how or where this body of information will be stored and subsequent access to this information. There is no indication of whether you are even qualified to conduct this study. I find this more offensive than unsolicited spam. This is the laziest, most intrusive, unscientific and most frightening use of new technology by one who claims to be a member of my profession that has ever dropped, unsolicitted [sic] into my mailbox. Not a colleague, and definitely not a subject.¹⁴

I found the tone of this response to be quite ironic given the nature of our inquiry, combined with the fact that most of the questions raised were in fact addressed in the informed consent form that preceded the survey on the web.

Overall, the survey was at least partially completed and submitted by 1256 faculty members out of the 8029 solicited (8929 surveys launched, less 900 that “bounced back”), for a

¹⁴ E-mail on file with the author.

participation rate of about 15%. The demographics of the respondent group (discussed below) indicate that it was a solid, random, representative sample of the whole.¹⁵

III. Limited Preliminary Statistical Findings

A. Demographics

1. Age, Gender, and Ethnic Make-up

Respondents ranged from 27 to 80 years old. More specifically, 8.2% were 27-35 years old; 23.8% were 36-45 years old; 34.1% were 46-55 years old; 27.6% were 56-65 years old; and 6.6% were 66 years old or older.¹⁶ Gender was split nearly down the middle, with 52.1% of respondents being male and 47.9% female. The vast majority of respondents – 85.7% – identified themselves as White, European, or European American; 5.4% as Black, African, or African American; 2.2% as Hispanic or Hispanic American; 2.2% as Asian, Asian American, or Pacific Islander; 1% as Native American or Alaskan Native; .7% as Middle Eastern, Arab, or Arab American; and 2.9% as Other.

Overall, these numbers are quite comparable to those contained in the AALS's *Statistical Report on Law School Faculty and Candidates for Law Faculty Positions, 2002-2003*.¹⁷

According to that report, for example, which includes data for “All Faculty in the 2002-03

¹⁵ In fact, 554 additional survey recipients started the survey and answered at least some of its questions, but never actually hit the “submit” button. The vast majority of these individuals “dropped out” long before completing any of the substance of the survey. For purposes of simplicity, I have left these “near-respondents” out of my calculations in all respects.

¹⁶ The total is slightly more than 100% due to rounding.

¹⁷ RICHARD A. WHITE, ASSOCIATION OF AMERICAN LAW SCHOOLS, STATISTICAL REPORT ON LAW SCHOOL FACULTY AND CANDIDATES FOR LAW SCHOOL POSITIONS (2002-2003), available at <http://www.aals.org/statistics/2002-03/page1.html>.

[AALS] Directory of Law Teachers” (unlike our survey, this definition takes into account non-teaching deans, other administrators, and emeriti faculty) – women make up 32.9% of all law faculty; including 51% of all assistant professors, 46.9 % of all associate professors, and 25.2 % of all full professors. AALS also reported that 85.2% of all faculty were “White”; 6.3% were “Black,” 3.3% “Hispanic,” and .7% “American Indian.”¹⁸ Given the remarkable similarity between the demographics of our survey’s respondent group and law professors in general, it is fair to say that, at least as a preliminary matter, the survey appeared to capture a reasonably random sample of law teachers at AALS member schools.

2. Rank

Unlike in many other academic departments, legal academics tend to progress rather quickly up the ladder in rank and to obtain tenure and full professorship at the same time. These facts were borne out by the statistics culled from our survey. Of the respondents, fully 63.4% reported that they had been tenured by their institution, while 57.1% reported their rank to be that of full professor.¹⁹ Presumably, then, only a small percentage of the 17% of the respondents who called themselves Associate Professor remained at this rank after obtaining tenure.²⁰ Assistant

¹⁸ *Id.* at tbl.1B.

¹⁹ Again, this is roughly equivalent to the percentage of all faculty who, according to AALS statistics, are full professors, which was 53.4% in 2002-03. *See id.* at tbl.1A (reporting 9,673 full-time faculty, with 4,681 full professors, 187 deans (presumably all full professors), 285 full professor associate deans, and 17 full professor assistant deans).

²⁰ AALS that reported 12.3% of full time faculty held the rank of associate professor in 2002-03. *See id.*

professors made up 7.6% of the total respondent pool.²¹ These individuals, plus the Associate Professors still in the tenure queue, presumably made up the 14.1% of respondents who reported that they were on the tenure track but had not yet received tenure.²²

Many law schools also employ faculty who teach “non-substantive courses” – traditionally legal research and writing, skills, and/or clinical offerings – who are not eligible for traditional tenure. Such “non-tenure track faculty” made up 19.2% of the respondents to our survey. The vast majority of these individuals reported holding the rank of either a “Clinical or Skills Professor” (10.3%), or something else, such as a “Lecturer in Law” (8%). We shall see that the demarcation between tenure-track and non-tenure track faculty at law schools appears – at least from the qualitative data – to account for a great deal of the perceived uncollegiality and lack of job satisfaction in the legal academy.

B. Job Satisfaction

All in all, law professors appear to be pretty happy with their job selection.²³ On the most

²¹ AALS reported that 7.8% of full time faculty held the rank of assistant professor in 2002-03. *See id.*

²² The percentage of survey respondents not yet tenured (14.1%) appears to be proportional to the size of this group over all. When asked what percentage of their tenure-track faculty had not yet received tenure, 73.4% of respondents reported this number to be 0-20%, while 21.2% reported the number to be 21-40%.

²³ This finding was, I must admit, a pleasant surprise. Having practiced law for 10 years in addition to my years of teaching, I personally have thought of a position in legal academia as a wonderful occupation with tremendous intellectual autonomy and the unique opportunity to help train the next generation of lawyers how to carry on the craft with skill and professionalism. I have always been surprised at the amount of griping that seems to go on in the halls and at conferences about the negatives of the profession – such as a pay-scale lower than that of lawyers in private practice. The survey results suggest that much of this griping (1) comes from a minority of faculty, and/or (2) is simply a manifestation of the enjoyment many humans get from complaining – even when they are generally satisfied.

basic question in this area, a full 83.7% of the respondents agreed²⁴ with the proposition that, “All in all, I am satisfied with my job.”²⁵ Of this number, nearly a third (31.6%) expressed strong agreement with this sentiment. Similarly, only 23.5% agreed with the statement that they “often think about quitting this job.” Moreover, choosing to be a law professor was not a trivial matter for the vast majority of respondents. They were nearly unanimous (94.1%) in their agreement with the statement that “[t]he work I do is very important to me.” More than three quarters of respondents agreed that “being a member of the law faculty is an important part of my self image.” Additionally, 60.7% reported that “I cannot imagine another occupation for myself.”

A large majority of respondents expressed happiness not only with their career choice, but with their particular place of employment as well. Specifically, 74% stated that “[i]n general, I like working here”; 69.6% agreed that they would be “very happy to spend the rest of my career at this law school”; and 68.4% indicated that their particular law school “has a great deal of personal meaning to me.”

Perhaps even more noteworthy, the majority of law faculty expressed happiness with their law school’s administration. A full 73.9% agreed with the statement, “My law school administration is sincere in its attempt to understand the faculty’s point of view.” The statement that “[a]dministrators at this school seem to do an efficient job” garnered agreement from 65.1% of the respondents. Similarly, 62.6% of respondents agreed that their administration “can be

²⁴ Unless stated otherwise, the term “agreed” in this essay refers to the sum of survey respondents who answered “Somewhat Agree,” “Agree,” and “Strongly Agree” to a particular question.

²⁵ Interestingly, when the question was asked in the negative, the response was even more pronounced: only 6.5% of respondents agreed that, “[i]n general, I don’t like my job.”

trusted to make sensible decisions for the law school's future.”

For those respondents who would consider leaving their academic institution, in descending order of magnitude, 45.7% agreed that it would be “primarily for career advancement”; 26.9% agreed that it would be “primarily for more status, such as a chaired position; 25.2% stated that it would be primarily for more money and/or better benefits; 24.7% agreed that it would be “primarily to find a more collegial place to work”; 18% agreed that it would be “primarily to find a place that would put a higher value on my scholarship; and only 11.6% stated that it would be “primarily to move into administration (a deanship).” Overall, these numbers indicate that faculty tend to change institutions not out of unhappiness with their current place of employment but for some type of forward motion in their career – with one glaring exception. That exception, of course, is the nearly quarter of respondents who said that they would be motivated to change law schools to find a more collegial place to work.

How do these numbers equate with job satisfaction in related fields? Here are some points of comparison. According to a 1992 study, about 70% of lawyers in private practice expressed satisfaction with their jobs.²⁶ This figure comports with the results of an ABA Young Lawyers Division Study of attorney satisfaction conducted in 1990, which concluded that about 75% of attorneys were satisfied with their work.²⁷ A 2001-02 national study of undergraduate

²⁶ Lawrence R. Richard, *Psychological Type and Job Satisfaction Among Practicing Lawyers in the United States* 29 C AP. U. L. REV. 979, 1055 tbl.12 (2002).

²⁷ See YOUNG LAWYERS DIVISION, AMERICAN BAR ASSOCIATION, *THE STATE OF THE LEGAL PROFESSION*, 1990 (1991). Cf. John P. Heinz et al., *Lawyers and Their Discontents: Findings From a Survey of the Chicago Bar*, 74 IND. L.J. 735, 736 (1999) (reporting that 84% of Chicago lawyers expressed satisfaction with their jobs, though only 77% reported that they'd become a lawyer if they could choose again).

teaching faculty found that 76.7% of these educators reported overall satisfaction with their jobs, with the number being slightly lower (75.6%) for faculty at 4 year degree-granting colleges and universities.²⁸ Thus, it appears safe to say that law professors, with an 83.7% overall satisfaction rate, are on the whole happier than their colleagues in other university departments, and happier than the graduates of their law schools who pursue the practice of law.

C. Collegiality

On collegiality-related issues, respondents to our survey reported generally positive but far from ideal conditions at their respective institutions. For example, 72.1% of respondents answered “moderate to extremely” when asked if their colleagues “create a cooperative and supportive environment.” A similar percentage gave answers in this range to the questions whether their colleagues “are encouraging and empowering” (71.5%) and whether colleagues “work to foster harmony” (70.4%). Faculty also seemed to think that, overall, colleagues participate in a fair share of their institution’s work, with 80.2% answering “moderately to extremely” when asked if colleagues “pull their own weight,” and 88.5% responding in this range to the statement that “colleagues take on special assignments given to them by the dean.”

Lurking behind these numbers, however, is a moderate degree of uncollegial conduct occurring on a regular basis at most law schools. This negative behavior came to the surface most clearly when respondents were asked to report on the frequency with which they had been the victim of specific conduct falling below the level of baseline collegiality²⁹ during the prior

²⁸ JENNIFER A. LINDHOLM ET AL., THE AMERICAN COLLEGE TEACHER: NATIONAL NORMS FOR THE 2001-2002 HERI FACULTY SURVEY 36 (Los Angeles 2002).

²⁹ As defined in Seigel *supra* note 1, at 411-13.

year at their home institution. For example, 53.3% of faculty members reported positively to the inquiry whether a colleague had “[p]ut you down or been condescending to you.” Nearly a quarter of respondents (24.8%) reported being a victim of this disturbing behavior two or three times and 5.8% said they had experienced it frequently. Fully 36.5% of respondents reported that a colleague had made “insulting or disrespectful remarks” to them at least once during the prior year. A substantial majority (55.5%) claimed that a colleague had “interrupted or spoke[n] over” them at least once, with 43.3% contending that this had happened on more than one occasion. On the flip side of the coin, 38.8% of survey-takers claimed to be the victims of “the silent treatment” by a colleague one or more times during the previous twelve months.

Perhaps not surprisingly, hostile or rude treatment of a more severe nature appears to be much less common in the halls of legal academia, with 97.2% of respondents reporting that they had *not* been physically threatened or intimidated by a colleague during the past year; 89.4% reporting that they had *not* been yelled, shouted, or sworn at; 77.1% reporting that they had *not* received any rude or hostile e-mails; and 76.7% reporting that they had *not* been the subject of hostile looks, stares, or sneers.

Lying appears to be a reasonably common behavior on law school faculties, with 31.5% of respondents reporting having been victims of collegial dishonesty at least once in the last year. Dishonesty of a different sort was reported to be even more rampant: 41.4% answered “at least once” to the question whether a colleague had “[a]ttempted to influence faculty governance or policy in an underhanded or dishonest way.” A similar percentage (42.4%) responded that a colleague or colleagues had on one or more occasions “[l]obbied for an institutional resource allocation (e.g., chair, money, faculty appointment) in bad faith (e.g., for selfish motives as

opposed to an honest belief in the best interests of the institution).”

The sentiment that at least some colleagues failed baseline collegiality due to their dodging of institutional responsibility was widespread. A full 72.2% of survey respondents claimed to witness a colleague “[s]hirk[ing] committee or other governmental responsibilities” one or more times during the prior twelve months. The perception that colleagues fail to carry their weight teaching was slightly less common, with 57.9% of respondents reporting witnessing the occurrence of this problem one or more times in the previous year.

D. Institutional Response to Uncollegiality

In *On Collegiality*, I hypothesized that law school deans and other university administrators usually fail to take action to enforce norms of collegiality at their institutions.³⁰ The survey provided moderate support for this hypothesis. When asked if their law school “[p]unishes people who are uncivil and disrespectful, no matter who they are,” only 11% of respondents answered yes, while 39.6% answered no. Nearly half (49.4%) claimed not to know. Similarly, a majority of respondents (52%) claimed not to know if their law school investigates uncollegiality complaints; 30.1% reported that such complaints are not investigated, and only 17.9% said that such claims are followed up. Only 25.8% of respondents reported that their institution has “leaders who take quick action to stop even subtle negative comments (for example, rumors, jokes),” while 34.8% reported that their law school did not have leaders of this ilk. Finally, fully 40.2% of respondents claimed that their law school leaders do not make “strong public statements about the seriousness of uncollegiality,” while 37.7% claimed otherwise, and 22.1% said they did not know.

³⁰ *Id.* at 416.

IV. Qualitative Analysis³¹ and Anecdotal Information

A. Methodology

As noted at the outset, 482 of the 1256 survey respondents (38.4%) provided comments in narrative form. They were prompted by a question labeled “THOUGHTS AND EXPERIENCES,” which asked survey-takers to share with us “(1) your personal experiences relating to the climate of your law school; (2) any other issues you believe to be important and relevant; and (3) any topics you believe this survey has left out.” No limit was placed on the space provided for narrative answers, and such answers ran from one to hundreds of words in length.

I read each of the narrative answers provided and placed them into categories based upon their major theme. A few of the longer answers were multi-thematic and were thus placed into two or more categories. This analysis led to the creation of 50 categories; of these, however, 36 contained 4 or fewer answers. Of the 14 themes addressed by five or more survey-takers, one was simply a warning that the respondent was either retired or a member of the law school’s administration, and two others were directed to complaints about the survey itself (23 respondents called the survey silly, stupid, unproductive, or biased; 20 noted that the survey was too long). These themes were unrelated to the state of collegiality at the respondent’s institution.

³¹ Though I make no claim that my informal methodology would stand up to the rigors of technical social scientific study, I do note that “Qualitative Analysis” is an accepted method of social scientific research. *See, e.g.*, QUALITATIVE HEALTH PSYCHOLOGY: THEORIES AND METHODS (Michael Murray & Kerry Chamberlain eds., Thousand Oaks, Cal. 1999); CAROL GRBICH, QUALITATIVE RESEARCH IN HEALTH: AN INTRODUCTION (Thousand Oaks, Cal. 1999). For examples of articles employing such methodology see Pearson et al., *supra* note 6; Katri Tenhunen & James Elander, *A Qualitative Analysis of Psychological Processes Mediating Quality of Life Impairments in Chronic Daily Headaches*, 10 J. HEALTH PSYCHOL. 397 (2005).

Thus, by process of elimination, the focus of this section is on the eleven themes addressing issues of collegiality mentioned by a minimum of five respondents each.

B. Important Themes

(1) My institution is collegial.

By a wide margin, the single most prominent theme, found in 115 answers, was a declaration that the respondent's law school is a fun, collegial place to work. These answers varied in intensity, length, and thoughtfulness. Many were straight and to the point. For example:

"Life here is pretty good." (R17)

"I think that I am very lucky to work at a school that has a very collegial faculty. But, I also think they're lucky I work here!" (R33)

"... While we are all different and have different views about many things, I believe that we are as friendly, as cooperative, as supportive of one another as any faculty can be." (R55)

"My law school has a wonderful faculty and administration. I am lucky to be here and enjoy my job." (R58)

"One of the best work environments I've ever experienced." (R93)

"I like my law school. It's a good place for both students and faculty." (R112)

"I have taught at 3 other law schools and this is without question the most collegial." (R132)

"I could not imagine a better place to work. Indeed, calling it 'work' is the wrong name. My colleagues are great. The succession of deans that we have had in my 40 years have been excellent. The students are outstanding. The atmosphere is professional and even warm. I hope that all schools are this way, but, from the remarks of visitors, I know that we are unique and we try hard to keep it that way." (R183)

“Great place to work – great people.” (R229)

“I realize my response may make my school seem halcyon; it’s not, but ti [sic] truly is a very very collegial place.” (R243)

“We have a very collegial faculty and administration. The faculty has diverse views but they rarely interfere with our interpersonal relationships. Junior faculty are treated with respect. Reading your survey, and its apparent negativeness re faculty life, makes me think we must live in some sort of utopian bubble.” (R252)

“A wonderful job, a wonderful experience. One issue you left out: law professors are pampered and overpaid!” (R290)

“I think our school is remarkably collegial and respectful. We don’t take actions against uncollegial or uncivilized behavior on a formal basis because it so infrequently occurs, and adequate peer pressure would be brought to bear on this behavior to cut it off.” (R387)

“I am blessed to live with a highly collegial faculty. It is the main reason I came to my present school (having seen the opposite sorts of behaviors at other law schools).” (R506)

“I find my school a wonderful place to work – supportive both professionally and personally.” (R514)

“I love my school and the main reason is the collegiality and generosity of my colleagues.” (R663)

“My law school is very pleasant, supportive, collegial place, with relatively large numbers of both female and minority full professors.” (R735)

“Best job in the world.” (R766)

“I am fortunate enough to teach in a place which enjoys a reputation for collegiality, and my experience is that this reputation is largely justified. That makes my survey responses rather uninteresting, I’m afraid!” (R810)

“I have had the pleasure to work at a law school committed to diversity and respect. It is a place that prides itself on collegiality and works hard to maintain it.” (R839)

“Overall, I’ve had a wonderful 11 years teaching legal research and

writing at my institution. In fact today, my school voted to increase the status of legal writing profs.” (R910)

“This is a bright, aggressive and proud faculty. Too many of your questions do not allow for the inevitable fall out from this characteristic; a fall out that can be superficially considered uncollegial or disrespectful, but is more style than substance.” (R943)

“The climate at this law school is very good. (The tenor of your questions makes me think that there must be serious problems at some schools.) This does not mean that we have no problems. But we cooperate to work those problems out rationally and in good faith.” (R989)

“My law school has a very harmonious faculty and good leadership. After 35 years I have seen my share of turmoil but in the last ten years there has been a remarkable degree of collegiality considering how ego centric law professors are.” (R994)

“I have many complaints about my law school and occasionally about the attitudes or performance of my colleagues but collegiality is not one of them. The environment is generally supportive and people are often quite kind to one another.” (R1108)

“It is a good place to be and to work.” (R1220)

Other respondents gave specific reasons or more detailed explanations for their high level of satisfaction with their institution and colleagues. Some examples that stand out:

“Note that in several places I said I’d heard derogatory remarks about male faculty members but not female. Most of the powerful members at our school are female and the women in general ‘take care of each other’ and talk a fair amount among ourselves. Therefore, when we get together, we will sometimes have a laugh at the expense of certain male colleagues. But, in my opinion, this is not malicious and my female colleagues tend to bend over backwards to be fair to male colleagues they don’t like. [Something that, in my experience, tends NOT to happen the other way around.] Overall, as you’ll see, I rate our faculty quite highly on collegiality, pulling their own weight, respect, etc. In my observation, this is one of the biggest advantages of having women in power – MEN act much more civilly when women have power. {Less of that testosterone competition [sic] – I have other words I use to describe it but will refrain from doing so here – having to do with the size of male sexual organs.] I DO see some negative aspects associated with being such a ‘nice’ school.

Because we tend to avoid conflict and putting people down – we also have times, I think, let somewhat marginal people ‘get by.’ For instance, we have regular post-tenure review, but the firmly established norm is that the review is totally complimentary, even when a person’s teaching or scholarship could use a great deal of improvement. I’ve been at vicious schools and, on balance, I’ll take collegiality and ‘lower standards’ any day. The major reason I feel this way is that, in my observation, the viciousness has virtually nothing to do with a faculty member’s ACTUAL value. In other words, it might be okay if vicious faculties used good judgment in setting high standards, but I don’t think they do. [I like to say that most tenure votes are popularity contests, just like the vote for cheerleaders in high school – the difference is that the cheerleading vote doesn’t PURPORT to be anything other than a popularity contest.] (R240)

“This law school hired me when I was 7 months pregnant with my first child. I have worked with four deans at this school and every one of them has been positive and supportive of women and minorities. Everytime [sic] I have had an idea for a new program, such as a summer study abroad for our students, bringing a national publication to the school, starting a children center, etc., the deans have established committees and the faculty has supported the new projects. . . . This has been a GREAT place to grow and develop – ‘Freedom to Flourish.’ I could not be happier with my choice of career or school.” (R259)

“I have taught at a number of institutions. This one is the most collegial of them all. It also matters that the central administration here is publicly supportive of women, racial minorities and GLBT people in higher administration.” (R440)

“I find some of the questions to be alarming if they have occurred at any law school. Here we strongly value a supportive atmosphere among the faculty & administration & students. . . . [W]e would not long consider anyone whose behavior indicated that they do not share our value for a friendly, cooperative work environment. Some of our junior faculty have commented on how pleasant it is here, and have given indications that it would take a lot to get them to go somewhere else. I know it sounds rare and almost fictional, but we are a small, youngish school with its own character and we all help to preserve it. . . .” (R490)

“You should have asked about the rank of my school. My current third tier school is much more collegial and diverse and much less sexist, racist and homophobic than the highly ranked school where I started.” (R559)

“I feel fortunate to be on a faculty where people value collegiality and

they are genuinely good, ethical, and caring people. There are a handful of faculty members who don't abide by this, but they tend to be marginalized. I feel under tremendous pressure because I am on the tenure track at the same time as being the single mother of 2 children. While I am exhausted and working too many hours most of the time, the support of my colleagues and positive environment at work gets me through. I feel that everyone wants me to succeed and it is very gratifying to work with such terrific people. That said, I look forward to having the tenure decision behind me because it has been a grueling and demanding schedule. While there is no overt sexism (and women are in top administrative positions), I do feel the subtle pressure not to be open about the demands on the home front. I think that it will be a long time before women in my position can be fully honest and open about the challenges traditional academic demands place on a person who is a primary caregiver for young children. While I can confide in a few close female faculty, I feel this is one area in which I need to keep my stresses and challenges fairly private. That said, I pinch myself daily for my good fortune in working in such a healthy and collegial environment. I love going into work, and I love interacting with my colleagues.” (R1157)

(2) My school's collegiality problems stem from the fact that non-tenure track faculty is undervalued.

The second most common theme reflected in respondents' written answers focused on the power differential commonly found at law schools between the tenured and tenure-track faculty on the one hand, and the non-tenure track faculty, such as clinicians and research and writing instructors, on the other. Approximately 50 respondents identified this divide as their school's number one problem. Here are some typical comments in this regard:

“Clinical and untenured people suffer many of the things identified in your survey to a much greater extent than long-time tenured faculty. Gender and race are not an issue. Status is an issue.” (R107)

“Clinicians are not respected despite years of experience, excellent work and scholarship. Resource allocation suffers (you did not ask about this). (R133)

“[C]linical professors are isolated socially and professionally from tenure track professors, so observations can be limited in that sense alone.” (R188)

“I am a legal writing instructor. All the legal writing instructors at my school are women. Legal writing instructors are generally treated less favorably than doctrinal faculty. My survey may skew results because I believe that I am treated less favorably primarily because I am a legal writing instructor. It happens that my legal writing instructors and I are also women. So the negative conduct towards legal writing instructors is also directed at women. I can’t say to what extent the negative treatment would be different if one or more of us were men.” (R215)

“The stress at my workplace, and the experiences I’ve seen with a lack of collegiality appear to be related more to ‘class’ than to race or sex, and this survey does not address that. The legal writing faculty, in particular, and to a lesser extent the clinical faculty are not valued by a majority of faculty. The lack of respect is not so high as hostility, but there is a marked lack of respect both for the subjects taught and the people teaching them. . . .” (R222)

“I became a legal writing instructor after 28 years of active practice. Many faculty members ignored me for years, some because I am not on a tenure track. After the administration sponsored multi-level discussions on civility and collegiality issues, the situation changed much for the better. . . .” (R232)

“Most of the clinical faculty are non-tenured and are not treated as equals by express policies, or by the administration and tenured faculty members.” (R297)

“[W]omen and minorities are relatively well treated here. Disrespect is more of a clinician/non clinician thing[.]” (R340)

“Because I am not tenure track, I perceive that I am often treated with disrespect, my views are discounted, and I am asked to ‘sit on the back of the bus.’” (R460)

“There is a definite division between skills faculty and tenured substantive [sic] faculty. We women skills faculty are in the basement in windowless offices and make ½ the money that others make. We are often asked why we complain about money[:] ‘Aren’t you married[?]’ Just this year we were told that we too would be able to apply for research grants but they would be less and fewer than ‘regular’ faculty.’ But when I first came here 14 years ago I could not go into the faculty lounge. And when I was appointed to a committee the student member could vote while I could not. And the beat goes on.” (R515)

“I am a lecturer, which I find quite isolating. . . . I have very little

interaction with 'real' faculty members. Since I am on the bottom rung, I find the stratification (tenured, tenure track, clinical, etc. etc.) in academia to be very unpleasant. I also find that many colleagues seem to lack social skills. Your survey had questions about racist comments, etc., which I've never heard, but I have had many colleagues barely acknowledge me in passing in the hall, I think because they may be shy, or can't be bothered to learn a non-tenured person's name, or" (R685)

"I believe you should have done more to explore the tenure/non-tenure dichotomy -- non-tenure faculty at my law school (and, I believe, many other schools) are treated like dirt. The real problems in law schools these days stem not from racism or sexism but from classism. Coincidentally, most of the non-tenure track faculty are female. For example, in talking with a STUDENT, a tenured professor here, referring to a non-tenured instructor who had been on the faculty fifteen years, stated, 'She's not my colleague nor could she ever be.' Another example, the non-tenure faculty here (the LRW and clinical people) are given the worst teaching times and room assignments. Even a brand new tenure-track person is given preference in teaching assignments over a twenty-year LRW person. Non-tenure instructors (the administration believes we are not entitled to be called 'professor') are routinely either not invited or asked to leave faculty meetings. A previous dean once told our LRW director that the non-tenure faculty was purposely not invited to the traditional end-of-year faculty luncheon because he (the dean) wanted only the 'real' faculty in attendance. My tenured and tenure-track 'colleagues' treat me like sh_t but I hang in there because my students need me and (most of the time) appreciate me." (R711)

"Lecturers in skills training are in the steerage class of law faculty – at least at the 'top-10' schools. I found it hard to answer some of these questions about collegiality, because regular faculty do not consider me to be a colleague. They are generally good people – certainly not hostile – but view my work as distinct from the primary purpose of the school. This leaves me mystified." (R801)

"There is great condescension [sic] toward faculty who teach in the first year legal writing program. They are paid at about 40% of the rate doctrinal faculty receive. They are not taken seriously as scholars and their intellectual interests are generally discounted." (R804)

"I teach in the first year lawyering program, and my experience is that among the other faculty of the program, we are all quite respectful and collegial, but that the other faculty members, for the most part, do not treat us collegially." (R880)

"When I joined this faculty, I was told that while my position was not tenure-track, it was 'pretty much the same.' I have not found that to be the case (and yes, this shows my naivete upon entering academia). Certain (older) members of the faculty devalue my contributions as a legal writing teacher, even though my qualifications meet or exceed those of the newer tenure-track hires. I find this to be extremely frustrating." (R929)

"I teach in the Legal Research and Writing Program, so my answers do not reflect the experiences of the tenure track or clinical faculty, which are probably more positive. LR&W is not respected or supported at my school. The faculty and administration ignore LR&W most of the time, but every few years, they attempt to 'fix' LR&W by ripping things up and changing them without learning what we do or why. The worst ripping up stage happened 3 years ago, and many of the people who worked in the program during that time, including myself, are still trying to recover." (R1029)

"Faculty who are non tenure track are treated terribly." (R1158)

"You have not addressed a key status issue in law schools. Less respect for those of us who teach legal writing and are not tenure track. Any answers I gave concerning my extremely supportive colleagues are only referring to the legal writing faculty. I rarely get feedback - good or bad - or even interact much with the tenure track faculty. This second class citizenship status is much more of a concern to me than anything you addressed in your survey." (R1199)

(3) The collegiality problems at my school are mostly generated by a small number of bad apples.

The third most ubiquitous theme articulated by survey takers directly supports one of the main assumptions that underlay my original article on collegiality: that most of the problems law schools face in the collegiality arena stem from the conduct of a very small minority of extremely difficult faculty members.³² Approximately 46 respondents made this point. A clear sub-theme of many of these respondents was that this dichotomy – a collegial faculty with a few notorious exceptions – made the survey difficult to fill out. Some responses falling into this

³² Seigel, *supra* note 1, at 432.

category included:

"Taking this survey was an interesting experience. I had a hard time giving consistent answers because the vast majority of my colleagues are very decent individuals but I have a very difficult time with the faculty as a whole. In part that is because of a few 'bad apples' – individuals who are profoundly unhappy and visit their rage on the rest of us in public settings – but in part it is also because I have been disappointed by our collective failure to address this problem. Indeed, over the years, it is those who critique uncollegial behavior who experience social pressure to grin and bear it, and the social pressure is almost absent (as far as I can see) with respect to correcting the 'bad apples.'"
(R103)

"We have two or three faculty members who question the good faith of other faculty members on a routine basis, and this sometimes comes across as racist or sexist (although I don't think it is). . . ." (R190)

"There is one woman on our faculty who is very hostile and dishonest. All the negative answers involve her." (R203)

"Your questions are difficult to answer. Most of our faculty members are collegial [sic] and pull their weight. A few are not and do not. . . ."
(R230)

"The survey was difficult to fill out because there are always a few obnoxious faculty members but on the whole I believe my institution is a collegial place that is supportive, but much of that depends on each faculty member's own personality. I am well-liked and thus not generally a target of inappropriate behavior, but I have certainly heard stories of very inappropriate behavior." (R251)

"It is hard for me to know how to answer questions about the behavior/collegiality of 'faculty,' The vast majority of our faculty are highly collegial, supportive, etc. But there a small handful who are bullies, intimidating, uncollegial, etc." (R286)

"Many of my less-than-glowing responses to the survey questions are based on the conduct of no more than two faculty members." (R335)

"It was difficult to answer some of the questions about faculty attitude[s] and behaviors, because one or two persons exhibit the negative behaviors, but the vast majority do not. A few malcontents are hostile, shirk, responsibilities, and never attend functions; but the vast majority of the faculty

are collegial, hard working, respectful, and supportive.” (R537)

“Answering some questions was difficult because . . . it is frequently two or three ‘bad eggs’ and not a general problem . . . There are several (males) who act in childish and self-important ways, but I have far more colleagues [who] are interesting, generous, and cooperative. The problem is a few bad eggs (who are either childish or don’t carry their weight) have a disproportionately negative impact. . . .” (R601)

“My faculty includes a large number of very supportive senior colleagues. It also includes two or three faculty members who are condescending and undermining to myself and others. My answers depend on which set of colleagues come to mind, and mostly I have thought of my positive and supportive colleagues in answering this survey. I have noticed that my colleagues who are condescending/undermining tend to be increasingly marginalized by the faculty as a whole. . . .” (R864)

“My school has a small number of folks who act out periodically (emotionally damaged alpha males, I call them). Most of the rest of the faculty are relatively pleasant most of the time.” (R1040)

“It is important that the few truly mean people on any faculty be ostracized for their bad behavior by both colleagues and administration. Otherwise, it can become a jungle where normal people do not want to spend time. In the past several years, my faculty has successfully dealt with a small but mean group and has become a very pleasant place to teach.” (R1086)

“A single tenured member of our faculty is responsible for almost all the uncollegiality regarding gender and race. Your questions implying that ‘investigation’ and ‘punishment’ of this behavior is the desirable faculty and institutional response does not match our experience.” (R1107)

“We are a small faculty but have 3-4 chronic malcontents who have borderline personality disorders that make them extremely difficult to work with.” (R1181)

(4) My law school is sexist, either overtly or unconsciously.

Approximately 36 respondents commented about the problem of sexism at their institution. According to these respondents, this sexism reveals itself in a variety of ways, from not factoring childbearing years into the tenure pathway, to the lack of mentoring for young

women academics, to the lack of institutional support for non-traditional families. Examples of responses discussing sexism include:

“The atmosphere of our law school is cordial but very, very sexist.”
(R47)

“I have worked on two faculties. In both the faculty were sexist. Women are hired in a significantly lower ratio than men and treated disparately and are generally seen as being less important than men. When they are hired its [sic] as clinicians. It is less sexist in academia than in practice so I guess I will stay.” (R301)

“I have found that I have to make my way alone, with almost no assistance, support or networking help from senior male faculty in my area of scholarship, whereas men in general, and men or women doing research in ‘favored’ areas, find help both in commenting on their work and in promoting them nationally within their fields . . .” (R407)

“. . . On questions of race and gender, I think your survey does indirectly get at the double standard for tenure and promotion on many faculties. This is a huge issue on my faculty. For a ten-year period in the school’s history, all women were denied tenure. This pattern ended when the first lawsuit was brought (resulting in a generous settlement). Although the pattern of tenure denial has ended, the double standard based on gender (and race) remains. Women and people of color have to perform at a much higher level in order to earn as much respect as a lesser-performing white male. The slightest chink in the armor o[f] a woman (or a person of color) triggers the presumption of incompetence. . . .” (R475)

“We had a serious claim of retaliation filed by a female faculty member [who] was not rehired after she had raised a concern about sexual harassment. The faculty was polarized, the males expressed their faith in the ‘man’ and their lack of credibility in the ‘woman.’ The administration failed to follow internal procedures, but the matter was ultimately settled. The woman faculty approached the Dean about some mediation to address concerns and issues of gender bias and lingering hostility. The Dean refused. Relations are very strained at this time. . . . In discussing of rankings under U.S. News and World report, the male faculty openly accuse the women of being unproductive and at fault in the schools ranking. . . .” (R602)

“. . . Our school has dealt with the role of women. While I personally feel well respected and am given significantly [sic] responsibility, it has been

difficult to see how many of my female colleagues feel alienated from the institution. Just a few comments, a[n] introduction at a group meeting that fails to acknowledge a female colleague's contributions to the extent that a male colleague's contributions are acknowledged, and the absence of significant committee responsibility all send a powerful message that is felt not just by the recipient but by others as well. I believe that often these consequences are unintended because the actor does not unstand [sic] his or her own situational power. While I've tried over the last few years to point out that it probably isn't intentional, it still hurts the recipient just as much, if not more, than the intended harm. The women at our institutional have been speaking openly about this issue and approached the dean to improve the climate for women. If we see these negative aspects in our community I think we have an obligation to actively address them in a way that improves the community climate. HOW to do this is incredibly challenging because not everyone is amenable to talking through these issues.” (R629)

“I and many other women and faculty of color have been subjected to both disparate impact (salary) and hostile environment (asked to contribute something 'cute and 'sexy' to a public presentation) situations at my school. The dean is a chief offender, who also empowers others to be discriminatory. Steps have been taken by the university and by various law faculty to address this problem, and some improvements are apparent, although I and others have also responded by pulling away from our commitment to the school. It is a very sad, demoralizing place to work.” (R678)

“It is an old boys club; I just returned from maternity leave, and my male colleagues are punishing me more than ever, even though I have written a great deal prior to taking my leave, not [to] mention doing far and above the usual amount of service. Sometimes I feel bitter about being left out of the club, but everything else about this job is so great that I cannot imagine leaving. . . .” (R702)

“Male faculty members use bul[l]ying tactics to [m]arginalize female faculty members and senior staff. They are shocked and disbelieving when it is suggested that the culture here is hostile to women.” (R854)

“. . . as for what was left out of survey: specifically, Q's re: not-so-subtle (classic power come-on) remarks, male to female, & more-subtle (classic we-didn't-hear-what-you-said till-a-male-later-said-it-&-then-it-was-credited-to-him behavior in committee mtgs). . . I came in here w/ a man, both of us at associate level: e.g., he has not been subjected to a tenured fac 'colleague' putting his arm around him in parking lot, 'you know, I could never vote for you for tenure if you can't even manage to go to lunch w/ me this

semester!': worse, I went, rather than reporting him to Dean (but knew latter course of action would achieve nothing but negatives for me) (was trained EEO counselor at a prior job & suffered there too, even in retaliation for handling a case): sigh. as you can see from above, even though we have many female fac members more than gay or minority ones, it is still far more acceptable to be sexist than homophobic or racist (no anti-semitism here; many fac are Jewish). I believe the vast majority of those not getting tenure in past were women. Women have different, more collaborative, less blunt self-aggrandizing marketing modes of conversation than men in my experience at many both non-legal & legal workplaces. Here (i.e., esp in academy), men mentor other men, & still largely leave women to shift for themselves. Other women may feel guilty about this, but do not pick up slack. Men also market themselves as naturally as they breathe, while women generally just do their jobs. Tenure 'problems' consequently with women are always placed to their individual doors (she just didn't write enough: sigh...) without any analysis of all the ways from year 1 the system helped the men more." (R954)

"Extremely egregious quid pro quo sexual harassment of female faculty members is a problem at my law school The dean and administration condone such behavior, protect tenured men, and attempts to force out or silence women (and men) who protest such behavior against themselves or female colleagues." (R1253)

(5) My school's problem is the result of an ineffective (or worse) dean and/or administration.

Whether deserved or not, it is not uncommon for leaders to be blamed for the behavior or failures of their subordinates. In this case, approximately 31 respondents placed direct responsibility for their school's lack of collegiality or poor atmosphere squarely upon the shoulders of the administration. A representative sampling of such responses follows.

"Dean is incompetent and obnoxious. Faculty is largely apathetic." (R36)

"The faculty in general are fine – the dean displays a lack of respect for the faculty and a fundamental inability to understand the nature of the academic enterprise." (R81)

"At the time I joined this faculty there were problems of lack of civility. These were eliminated by the faculty members departing. At this time the only

problems of a lack of civility or respect relate to the Dean.” (R328)

“Faculty has had less to say about important matters in past two years. Administration bullies faculty. [A]dministration has raised the ‘race card’ to manipulate its goals.” (R480)

“Faculty governance and faculty respect have been totally undermined. The corporate model has been adopted and administrators have proliferated and have all the power. Dissent is suppressed by pay offs.” (R562)

“... You spent a good deal of time on faculty-fac relations. Yet most of the pollution of the environment here is attributable to a defensive, deceitful dean who plays favorites, comfortably lies to the faculty, and generally insults and power plays” (R583)

“The climate at this law school suffers from the arrogant and disrespectful behavior of the administration, not the faculty. It belittles some faculty, particularly those who do not publish enough or who teach skills. It ignores the faculty’s wishes on governance issues.” (693)

“Our female dean is hostile to the women on the faculty and has disenfranchised almost all of the faculty. We have a CEO style administration and the faculty are a collective of individual, self interested entrepreneurs. There is little sense of common community or commitment to students.” (R777)

“Our dean is a despotic egoist. He shows favoritism in foreign teaching assignments, pays the airfare for some spouses but not others, has lied on several occasions and is generally untrustworthy. His favoritism has created ‘camps’ within the faculty and thus disharmony. The people who enjoy his favor have become a cabal and that has further poisoned the atmosphere.” (R821)

“... At the present time at this institution, there is a very serious breach of trust between administration and faculty, which has splintered the faculty and contributed to extraordinary levels of tension and hostility. . . .” (R915)

“I found it hard to answer questions about ‘the law faculty’ or about ‘the law school’ because there are numerous situations at my law school in which a Dean and the law faculty share radically opposing views. Who is included in ‘the law faculty’ and who is considered in ‘the law school?’ For example, if there is a serious issue over the strength of faculty governance (with the Dean trying to take over power in areas that traditionally have been managed by faculty governance), then it is difficult to say what ‘the law school’ empahsis

[sic] is concerning the strength of faculty governance. The faculty strongly values faculty governance whereas the Dean places little emphasis on faculty governance. Many of the traditional faculty values of my law school are not shared by the current dean, which is making life very unpleasant at the moment. The survey does not differentiate between dissatisfaction with a leader and dissatisfaction with peers. For example, if I were to include the Dean as a member of 'the law faculty' my answers would be quite different. There would be much more distrust, animosity and negativity appearing in my answers. The survey doesn't seem to address how the style of a leader, which is at odds with the values of the majority of the faculty members, can substantially affect one's job satisfaction." (R1185)

"Big disconnect between lack of collegiality, respect, truthfulness shown by the Dean and efforts on the part of most of faculty to maintain collegiality, communication, mutual respect." (R1249)

(6) My faculty is uniformly uncollegial.

As is clear from the preceding themes, the majority of respondents who took the time to comment on a lack of collegiality at their law school tended to point the finger at a particular or isolated source of the problem – be it a few cranks, a cadre of sexists, or poor administrators. But a measurable number of respondents – about 16 – made a point of stressing that, overall, their faculty is composed of generally uncollegial people, casting a pall over the entire institution. A few even waxed poetic in their negative descriptions of law school life.

"Our faculty practices the best policies of Animal Farm -- all pigs are equal except some pigs are more equal than others. If we were a law firm, we'd be bankrupt. In a nutshell, except for a select few, some folks here are downright nasty to each other -- quite a shame because in other settings, they can be quite charming. I survive by trying to see the best and the hurt in each one. Most act like asses because they are insecure and immature, and not quite smart enough (despite incredible intellect) to realize that being nice and kind and giving isn't a weakness." (R238)

"We law professors are extremely privileged folks who engage in shameful amounts of hostile and selfish gamesmanship under the cover of lofty-sounding rhetoric (whether it be of the right wing or left wing variety)." (R361)

“cs lewis was right about academia; it remains classist, racist, sexist, and uncollegial. teaching writing and studying, however, is so fun.” (R398)

“Having pracxticed [sic] in government for 16 years before I came to this school, I was shocked a[t] the amount of politics and backstabbing that I have observed. The pettiness of the faculty is incredible. . . . I am also bothered, as a long time practitioner, that the faculty has very little respect and tolerance for those who are not longtime academics. . . .” (R598)

“Your questions were differentiated enough to capture the particular difficulties I have experienced at my current job. Indeed, they helped me to get a better perspective on it, for which I thank you. The fact that you had so many questions about maltreatment by colleagues made me realize that I am not the only one who has had such appalling experiences. . . . The one difficulty I encountered in answering your questions is on the questions where my dominant response (about my work environment) is negative, even though I can think of one or two good people to whom the statement does not apply. I answered in line with a reverse bad apple metaphor: one or two good ones cannot save a rotten barrel.” (R673)

“[A] lot of your questions that seem to be designed to elicit information re bad conduct really are descriptive of essentially all law profs who tend to be back biting gossips and malcontents. It’s the only job I could really get where I get paid to gossip about my colleagues is one way of putting it.” (R703)

“[I]n my experience, legal academia is full of nasty, petty, immature people, and law schools are very unpleasant and unfullfilling places to work. [L]egal education is unpleasant and not very effective. [T]hough I have managed to fight my way to the top in this field, I so dislike it that [I]’m planning to resign my tenure and go back to school in another discipline. [I]’m not going to spend the rest of my life working in an environment that is so at odds with my personal values. [N]o wonder law students are miserable – the whole setup is miserable.” (R738)

“ . . . if many more of the faculty were any more self-absorbed, they would be disposable diapers. Rudeness & selfishness is rampant.” (R988)

“Law professors at my school are like independent contractors. Any attempt to request or require cooperation is treated as a joke. Professors at my school spend more time defending their turf or engaging in the private practice of law than teaching or participating in the community. . . .” (R1160)

(7) The problem on my faculty is discrimination against the white males and/or conservatives.

Some survey respondents – numbering about 15 – contended that the collegiality problems at their school result from “reverse discrimination,” i.e., the unfair treatment of white males and/or politically conservative members of the faculty at the hands of liberals, women, and minorities. In light of national statistics indicating that the majority of academics are, indeed, liberal,³³ it is not very surprising that, in some places, conservative members of a faculty might feel embattled or under siege on the job. A sampling of these comments follows.

“Discrimination against conservatives, whites, and males is rampant. Interviews for faculty positions were granted or denied based largely on race (with minority race being a plus) and gender (with female gender being a plus). Conversations in hallways are always disrespectful of conservative opinions.” (R28)

“Some of the questions about sexism seem directed toward female victims. I believe males are much more victimized in terms of salary, awards, hires, space, and many other factors. You ask nothing about political or philosophical diversity. That is the major problem in legal academia. I suspect the student body is split politically, but faculty are 95% to the left . . . many strongly so. . . . Many faculty feel at ease ridiculing conservative political viewpoints and conservative judges, They also feel comfortable ridiculing people from the South or ‘country’ or who were educated at public schools. In sum, you[r] survey raises some important issues, but misses the real problems: almost everyone thinks alike and they can be very hostile toward those who disagree with them in terms of legal philosophy or political philosophy.” (R249)

³³ See Deborah Jones Merritt, *Research and Teaching on Law Faculties: An Empirical Exploration*, 73 CHI.-KENT L. REV. 765, 780 n.54 (reporting results of her study where, out of 832 law professors surveyed, 75.4% characterized themselves as “moderately” or “strongly” liberal or left, 14.6% chose the “middle-of-the-road” designation, and only 10% characterized themselves as “conservative”); Michael C. Dorf & Samuel Issacharoff, *Can Process Theory Constrain Courts?* 72 U. COLO. L. REV. 923, 946 n.79 (2001) (citing an unpublished 1993-1994 survey of 710 law professors from the top 100 law schools conducted by Professor James Lindgren where 80% of the professors characterized themselves as Democrats or as leaning towards the Democratic Party, and 13% characterized themselves as Republicans or as leaning towards the Republican Party).

“I think almost all instances of discrimination I have witnessed in academics happen because individuals subject to discrimination happen to be either white, male or conservative or sometimes all three.” (R379)

“Political correctness rules and suppresses all differing views. Feminists make school a hell for men. Monolithic politics. No attempt to treat conservatives fairly. Place is like a church and if you are not a true believer, you will not get a seat in a pew. This survey’s concern re racism and sexism is wholly misplaced. The opposite is true.” (R656)

“The questions on the forms did not adequately capture the central problem of uncollegiality at my law school which is very uncollegial behavior toward straight white men faculty members especially if they are even slightly not to the left on the political spectrum. The school does seem to avoid or mitigate effects of all other aspects of uncollegiality but seems to only at least ignore and at most outright encourage – depending on details – this one type.” (R997)

“I believe this survey has failed to address liberal v. conservative bias and discrimination toward those who are mope [sic] conservative and/or religious. I think conservative and/or religious scholars have a harder time being hired and that jokes about, critical statements about the competence of, and outright hostility toward such faculty members can be fairly common and is not viewed as a problem because of the overwhelming liberal and non-religious character of legal academia.” (R1167)

(8) The main problem my school faces is a generational divide between “young turks” and the “old guard.”

Thirteen respondents proclaimed the view that the collegiality problem at their law school was primarily generational in nature. The source of this tension arises from several factors: (1) elder faculty were hired at a time when the emphasis was on teaching, not writing, and feel insecure about their place in rapidly changing academia; (2) newer faculty fail to understand the different expectations under which their elders were hired, leading them to express subtle and not so subtle signs of contempt. Some specific comments help illustrate this divide – which, one would expect, will dissipate over time.

“There are far too many faculty who are totally unproductive. One can be tenured after writing only two articles, and many faculty who have been at the school for approximately 20 years wrote their two articles for tenure, and that’s it. To add insult to injury, the only factor upon which compensation is based is longevity, and there are literally tenured associate professors who have written two or three articles in 20 years making substantially more money than full profesors who have written 25 or 30 articles. . . .” (R582)

“I can’t really compare my school with others, having been here for 19 years, but here it’s the people who consider themselves the most scholarly who seem to look down upon the rest of us. Younger faculty seem to be more uncivil and prone to writing hysterical and obnoxious email messages than older faculty. I love teaching and my students. I would die for a few of my colleagues. But in general, my colleagues detract from my work environment rather than add to it. Those who are the worst seem to be those who I suspect could not function in the real world.” (R645)

“There is a group of senior faculty with influence disproportionate to their numbers who intimidate less senior faculty, resist change, and comment condescendingly and obnoxiously about those who disagree with them, in faculty meetings, in hallway conversations, and in emails cc:d to the faculty as a whole. Other faculty members let them get away with it, and this group often gets its way by default.” (R823)

(9) My law school is racist.

Thirteen individuals responded to the survey by claiming that their law school is racist in one fashion or another. Many stated that the racism is subtle, but nevertheless affects their perception of the collegiality of their institution. Here are some representative comments:

“Personally, I would say that the climate is worse at my law school than my experience working at a law firm, which was notorious for sexism and racism. . . . Furthermore, most non-minority faculty go out of their way to tell minority faculty members why minority candidates should be simply hired based on Afrimative [sic] Action requirements. These conversations are particularly disparaging because usually the minority candidates are better qualified than the non-minority candidates.” (R120)

“I teach at [name of school]. . . . [M]y sense is that [school] is an entrenched, racist institution that puts on a veneer of intellectualism and

scholarship to cover up ignorant and bigoted views that I thought had gone out of fashion in the Seventies. Your questionnaire is a good one, but possibly deceiving. For example, a school community may act cooperatively but in a way that is hostile to minority groups such as in hiring and promotion issues. After all, the Klan and the Nazis would get strong points in cooperativeness and collaboration (as would many law schools). . . . (R550)

“This law school has never had a person of color who has held an endowed chair.” (R882)

“My law school environment is positive overall. However, many of these survey questions do not address unconscious racism by well-intentioned white faculty or internalized racism by opportunistic faculty of color. These are the negative issues that I grapple with most frequently.” (R1025)

“ . . . Finally, the racist attitudes that I tend to see happen in the hiring process when there is a review of credentials. Minority candidates seems to receive more speculative criticism dealing with how the candidate would teach or grade.” (R1066)

“ . . . We do have issues of racism and sexism, but they are more subtle than the questions on your survey would suggest. For example, there have been occasions when we have interviewed African-American candidates and their scholarship has been unfairly attacked and ridiculed, as a way of preventing their hiring, rather than outright racist remarks being made.” (R1151)

(10) The problem at my school is the division between the “scholars” and the “teachers.”

A small number of the respondents (7) claimed that the main collegiality problem at their law school stemmed from tension between the “teachers” and the “scholars.” Here is a comment from a “teacher” that makes the point in a very personal way:

“ . . . My principal source of dissatisfaction is the over-emphasis on scholarship here, to the exclusion of all other forms of institutional work, and the advocacy by some people on the faculty that no amount of publication activity is 'enough.' Viewing most legal scholarship as largely a waste of time, I find myself often demoralized. My colleagues might SAY that they value my contributions, but their more general positions reveal that they, at best, tolerate persons with my particular agenda. I suppose that one could say that a

non-believer in scholarship should not have chosen an academic career, and any discomfort I feel is my own fault, but my sense is that the obsession with writing has grown tremendously over the past 25 years. Now all people care about is how many SSRN downloads they have. It has all become a childish game.” (R346)

On the other hand, here is a comment from a scholar making the opposite point:

“You didn't ask much about scholarship. Big problem in law schools is that some people don't write. That is, they don't do at least 1/3 of their job, yet they take home the same or nearly the same salary as someone who does write. That has the potential of spoiling the law school atmosphere.” (R41)

(11) Inter-school competition for students, brought on by the “rankings game,” has negatively impacted the climate at my school.

Finally, seven respondents specifically made reference to the fact that the collegial atmosphere at their law school has been negatively impacted in recent years by the intense competition among law schools for students with top credentials in order to improve their school's standings in the national rankings. As one particularly exasperated respondent put it:

“I am leaving to go into business, not as a lawyer, but using a prior background in business. I don't even want to go to another law school. Legal education is becoming a joke. All divas (including the students) and no bottom line goals except US News.” (R625)

V. Conclusion

In advance of a sophisticated analysis of the survey data, one must be very careful in drawing any overall conclusions about the state of collegiality and workplace well-being in legal academia. Certainly, no correlative assertions can be made. Nevertheless, this preliminary review has revealed some noteworthy information. Certainly, law faculties are far from perfectly collegial associations, and many if not most law professors have a gripe of one sort or another. Despite these facts, however, the overwhelming majority of faculty members appear to be happy

with their choice of career.

The qualitative data also leaves one with the impression that, in many instances, the source of uncollegial conduct is primarily the result of a few difficult personalities on any given faculty. Beyond that, some faculties appear to encounter friction along either “status” (non-tenure track versus tenure track) or “political” (conservative versus liberal; majority versus minority; male versus female) lines. Upon reflection, neither of these fault lines should come as a surprise, given the egos of the individuals smart and successful enough to obtain a position in legal academia, the close relationship between law and politics, and the passionate political views held by many law faculty.³⁴

Participation in this empirical endeavor has also convinced me of the value of such work. This is not a trivial question; indeed, it is the central issue being addressed at this year’s AALS annual meeting, which is titled, “Empirical Scholarship: What Should We Study and How Should We Study It?”³⁵ Even at this preliminary stage of my research, I feel comfortable stating that obtaining “hard data” is sufficiently enlightening to justify the considerable effort it requires. In the instant case, the data concerns the climate within our own profession, while the AALS clearly contemplates that most empirical legal scholarship will be focused on the infinite number of testable assumptions that underlie all aspects of the law. From this experience, my humble advice is that those of us who are not expertly trained social scientists should collaborate with

³⁴ See John O. McGinnis et al., *The Pattern and Implications of Political Contributions by Elite Law School Faculty*, 93 GEO. L.J. 1167 (2005) (arguing that liberal political ideology that appears to dominate the elite legal academy may manifest itself through the efforts of law professors to influence important political issues of the day).

³⁵ See <http://www.aals.org/am2006/theme.html>.

others who are, because designing a study that will yield valid results is far from simple.

Moreover, although the endeavor is worthwhile, we should treat empirical study – and the new “knowledge” it purports to yield – with the same care and healthy skepticism that we bring to all other academic pursuits.